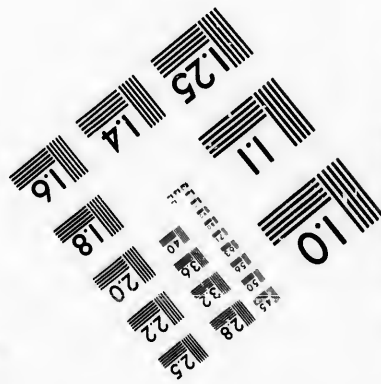
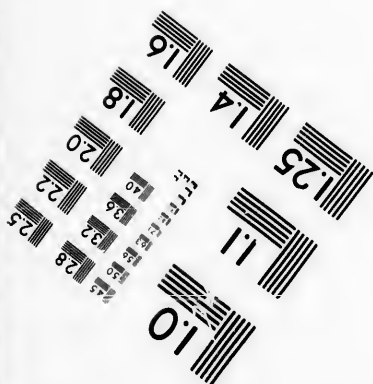
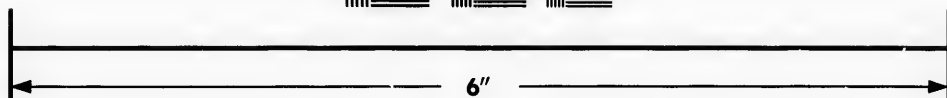
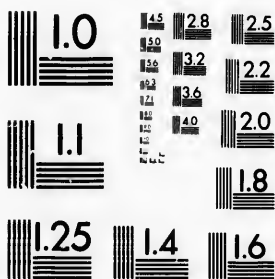


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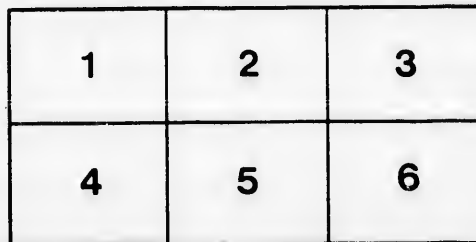
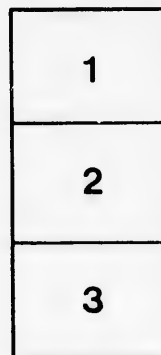
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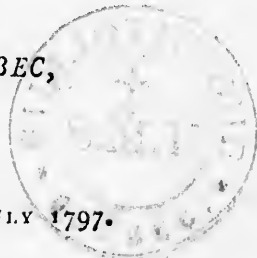
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THE
TRIAL OF DAVID M·LANE
FOR HIGH TREASON,

BEFORE
A SPECIAL COURT OF OYER AND TERMINER

AT QUEBEC,

ON THE 7th. JULY 1797.



QUEBEC:

PRINTED AND SOLD BY J· NEILSON.

1797.

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THE
TRIAL OF DAVID M'LANE &c.

AT seven o'clock in the morning of Friday the 7th of July the Prisoner was put to the Bar, and the panel of the petit Jurors was called over. Eleven were challenged on the part of the Crown, and twenty four by the prisoner. The following gentlemen were sworn :

John Blackwood,	James Irvine,
John Crawford	James Orkney
John Painter	James Macon Goddard
David Munroe	Henry Cull
John Mure	Robert Morrogh
John Jones	George Symes.

The Clerk of the Arraignment charged the Jury, with the prisoner upon the indictment found by the grand jury against him, which consisted of two counts—the one for compassing the death of the King—The other, for adhering to the King's enemies. On each count fourteen overt acts were laid; which were in substance as follow, and the same on both counts :

(1.) That the Prisoner conspired with divers persons unknown to solicit the enemies of the King to invade the Province :

(2.) That he solicited the King's enemies to invade the Province :

(3.) That he conspired with the King's enemies to excite a rebellion in the Province.

(4.) That he conspired with divers persons unknown to aid and assist, and to seduce the King's subjects to aid and assist the enemy in an hostile invasion of the Province.

(5.) That he incited and solicited divers of the King's subjects to join in the projected rebellion; and to assist the enemy in the projected invasion :

(6.) That he incited and solicited divers persons (*not being subjects*) to levy war against the King in the Province, and to assist the enemy in the projected invasion :

(7.) That for the same purposes he absolutely enlisted several persons :

(8.) That he conspired with others to introduce arms and ammunition into the Province.

(9.) That he collected intelligence respecting the disposition of the King's subjects towards his government, with intent to communicate it to the enemy :

(10.) That he acquired knowledge of the strength of Montreal, and of the

the means by which it might be invested by the enemy, with intent to communicate it to the enemy :

(11.) That possessed of the information and knowledge set forth in the two last mentioned overt acts, he left the Province for the purpose of communicating both to the enemy :

(12.) That he returned into the Province clandestinely under the assumed name of Jacob Felt :

(13.) That he conspired with others to take the walled and garrisoned City of Quebec by surprise, to cause a miserable slaughter of the King's subjects, and to deliver it into the hands of the enemy : and,

(14.) That with these views and intentions he entered the City of Quebec on the 10th day of May last.

The indictment was opened by Mr. CARON.

The ATTORNEY GENERAL entered fully into the case of the prisoner : He said, the duty of the office which he had the honor to hold under His Majesty's Government called him to support the indictment which had just been opened—that it charged the prisoner with the highest crime on which a Canadian Jury could give their verdict, and required from those who were impanelled the most serious attention, to the interests of the Crown on the one hand, to those of the prisoner on the other. He felt, he said, most sensibly what his own official situation required from him, and he wished he might discharge his duty, as well as he was confident the Jury would discharge theirs ; for whatever their verdict might be, he was convinced it would be that, which the justice of the case would dictate. He then stated that the Indictment consisted of two Counts, which he observed were two distinct species of treason, compassing the King's death, and adhering to his enemies ; both of which were founded on the ancient statute of 25. Edward III ; that treason was distinguished from all other crimes which (generally speaking) consisted in the Act of the criminal, while treason consisted in the intention, and that hence came the necessity of overt acts, in order to prove the treasonable intent. Human intellect could only judge of the operations of the mind by the actions of the body ; and it was therefore upon the proof which he should offer of the several overt acts laid in the indictment that the Jury must form their opinion, whether the prisoner was guilty, or not guilty. He then enumerated the several overt acts charged, on which he commented at length, observing that they resolved into this, that the prisoner had done the utmost in his power to excite a rebellion and to assist the Republic of France in an intended invasion of Canada, with a view to depose his Majesty from the Government of the Province—and that this intention in the prisoner was not only an adherence to the King's enemies, but a compassing of his death ; for that the political or civil death as well as the natural death of the Sovereign were both within the purview of the Statute—an attempt to destroy the political existence of the King tended not only to destroy the Sovereign himself, but to annihilate the constitution of his government ; great therefore and abominable as all attempts against the person of the King were, the crime of compassing his political destruction was in its consequences to society equally atrocious. He wished not he said to infer that the prisoner was guilty because he was accused of the complicated treason charged in the indictment, he certainly stood (till proved to be guilty),

ty,) entitled to the full presumption of innocence, but he thought himself justified in calling the attention of the Jury to what must have been the situation of the Province had the attempt imputed to the prisoner succeeded but in part—a suspension of all civil rights, the horrors of war, and a daily expectation of something worse were the unavoidable consequences—but said the Attorney General “if success had ultimately crowned the attempt, our properties, our lives, and what is still more valuable than either, the happy Constitution of our Country, all that man can value in civil society, all that attaches us to existence; ourselves, our nearest and best connections, our Government, our Religion, our rational Liberty which we boast as British Subjects, all must have laid at the mercy of the French Republic—what that mercy is, let the black annals of the Republic tell: it is there indelibly recorded for the horror and execration of posterity in the blood of their lawful Sovereign, in the blood of their nobility, in the blood of their clergy, in the blood of thousands of the best and most innocent of their citizens.”

He observed that the Prisoner was generally supposed to be an alien—a subject of the United States—but that this was immaterial—all persons within the Province owed a natural or local allegiance and if they acted contrary to the duty of either, they were guilty of Treason—in the scale of legal consideration no distinction was to be found. If we were traiterously betrayed whether by a subject or a foreigner, the injury to the public was the same—He then opened the evidence which he intended to produce, of the war he said he should not offer any proof, it was a fact of public notoriety—to support the remaining allegations of the indictment, he should call six witnesses, (*here the Attorney General stated what would be proved by William Barnard, Elmer Cuyang, François Chandonet, Thomas Butterfield, Charles Fricchette and John Black, but as what he stated, these witnesses did prove, we think it unnecessary to repeat what he said as we mean to give the substance of their respective depositions.*)

He then stated the various facts, that had been adjudged, to be overt Acts of Treason, laying it down as a principle that all measures which manifest the Treasonable intent were such—it was not he said, his Province to state the Law upon the present case (which he conceived however was perfectly settled) *That* the Jury would receive from much higher and most certain authority, but he would advert to the excellent and learned Charge which had been given to the Grand Jury, at the opening of the Court, in which an intention to promote an invasion of the King's Dominions, by his enemies, followed by the actual entry of the party, into those Dominions, for the purpose of accomplishing his intention, was declared to be High Treason—and in which also words coupled with Acts, were recognized to be legal evidence of treason. These he observed were points of Law, undeniably settled and strongly applicable to the case of the Prisoner.

After some further observations, the Attorney General concluded a Speech of two hours, in these words:

Gentlemen,

“I trust we shall lay before you, clear and full proof of all the overt Acts charged in the indictment, but if one of them only, is established
“ by

“ by two Witnesses, or two of them by one Witness to each, whose testimony you believe, the evidence will be sufficient—the Prisoner will not then be entitled to the presumption of innocence, the crime of High Treason, will stand *proved* against him, and your Verdict on the oath you have taken, according to the duty you owe to GOD, to your Sovereign and your country must be, that he is GUILTY, in manner and form, as he stands Indicted.

WITNESS FOR THE CROWN.

William Barnard—Deposed, that he was of Montreal, a British Subject, that he first saw the Prisoner, at the Province Line in July 1796; the Prisoner told him, he wished to have some private conversation with him, when alone the Prisoner said, “ I have something of importance to communicate to you, it is a secret, in telling it *I put my life into your hands,*” he added, that it might appear singular for an apparent stranger to address him in that way, but that in fact, he the witness, was no stranger to the Prisoner, that he the Prisoner, had made many inquiries respecting him, and had been particularly recommended to him, as a man that might be trusted, that the Prisoner however exacted a solemn promise that the Witness would never divulge what he should tell him, which the Witness gave—He then said that he was there for the purpose, “ *of bringing about a revolution in Canada,*” that he wished for assistance within the Province, and pressed the Witness to take an active part in the business, which he said should make his fortune, this the Witness refused and left him—The Witness saw the Prisoner a few days after in Montreal, and was again solicited by him to join him.—The Witness again refused, the prisoner reminded him of his promise, not to divulge what he had told him, and assured him that he should be protected if he kept his secret—In November last the Witness saw the Prisoner again at La Prairie, near Montreal—the Prisoner then told him that things were ripening fast, that this was already a conquered country; that a French army and fleet would be in the river early in the Spring and pressed him again to take an active part, which the Witness professed himself unwilling to do, the Prisoner then asked him if he would engage to sound the minds of the people, and let him know who might be depended upon, that if he would and likewise inform him where the property of the Seminary and of the principal Merchants at Montreal was deposited, he should at all events be protected, on this the witness said he would reflect, the prisoner left him shortly after. The witness said that previous to the last conversation he had given information to Mr. M^cCord, a Magistrate at Montreal of the prisoners views, and that by his advice, he appeared to acquiesce in his offers at the last interview, intending by that conduct to obtain more ample information of his intentions—but that the Prisoner did not appear to be satisfied with him, and told him at parting, that he could not communicate any thing further to him, before he undertook to assist him.

Being cross examined by Mr. Pyke of Counsel for the Prisoner, the Witness said that he had not received, and had not been promised, nor did he expect from government or from any person, any reward whatever, for appearing as a Witness on this Trial.—That the prisoner had told him he was

a Subject of the United States, but that he of his own knowledge could not say whether he was or was not.

Elmer Cusbin,—Deposed that he was a British subject, he had known the prisoner eleven years, he saw him at his own house at Montreal in November last, after some conversation with the prisoner respecting the then state of the Province, the witness expressing some fears respecting the loyalty of the Canadians, the prisoner asked to speak with him in private, they went into a private room when the prisoner after telling him that he had a secret to communicate to him which if known, would take his life, required of him an oath of secrecy which after a lengthy conversation, the witness took—the prisoner informed him that he was employed by Mr. *Adet*, the French minister at Philadelphia, to promote an intended invasion of Canada in the spring by a fleet and army of 10,000 men, that he produced from his saddle bags a pair of shoes and from between the soles of one of them a paper signed “*ADET*” that this paper was a certificate purporting that *Adet* was interested in the concerns of the prisoner’s family. This the prisoner told him would convince him that he was employed by the French republic, it was he said intentionally written in the obscure style in which he saw it, that it might not prove an evidence against him if he was taken—He told him that he was then going to Philadelphia to communicate to Mr. *Adet* the information of which he was already possessed and should probably proceed from thence to France, and return to Philadelphia, but should certainly visit Canada in the spring—He told him that the object was to attack Quebec and Montreal at the same time, and that he in person was promoted the command against the latter—that he was then just returned from the mountain of Montréal which he had been inspecting in every part and found that it commanded the city entirely, they meant he said to seize whatever property was in the hands of those who should be adverse to their views, to defray the expence of the expedition, and in the first instance *effectually to secure* the Priests and leading Characters of the Province—that it would indeed fare hard with all who were not favorable to their cause—that he had engaged several persons in the scheme who were resident near the Province Line, and they had undertaken to enlist a certain number of men each, that the arms and ammunition for these persons and for as many Canadians as would join, would be furnished from France through the United States of America—He then warmly solicited the witness to take an active part in the business, promising him a Commission in the French service, or any other reward he might ask, the Witness declined his offer—he then pressed him to engage to collect and give information of the state of the country, from time to time till the Spring—this also the Witness refused, “will you then said the Prisoner, engage to do your endeavour to keep the Canadians quiet for the present, the opposition they now make against the Road Act, is premature and highly detrimental to our interests,” the Prisoner finding that the Witness refused to assist in any way—advised him to reflect seriously on what he had said, adding, depend on it, this is a conquered country, he then told him to remember his oath and keep his secret, and that if he dared to divulge it to any one, his life should be the immediate forfeit—“I think” says he, “on reflection
“ you

“ you will accept my offer, and it is probable that some one may be sent during the winter, to converse further with you, if any body is sent he will tell you that he is come to talk with you, *on Family Matters.*”—The Prisoner then left the Room, the Witness had no further conversation with him.—

Upon his cross examination, by Mr. Francklin also of Counsel for the Prisoner, he said that he had given information to Government respecting the prisoner's designs in November last—That he had not received or been promised nor did he expect any reward whatever for his evidence—He always understood and believed the prisoner to be a subject of the United States.

Francis Chandonet—Deposed, that he was a subject of the United States of America. He knew the prisoner for the first time about eleven months ago. He saw him near the Province line the beginning of last winter. The prisoner wished to speak to him in private. They walked out together, when the prisoner informed him, that he had been recommended to him; that he had something of the utmost importance to communicate to him, but required a promise of secrecy. The witness refused; but the prisoner, observing he supposed the witness would not wish to take his, the prisoner's life, said he would proceed: He then told the witness that he was employed by the French Republic to go into Canada to feel the pulse of the inhabitants, to learn whether they were well or ill affected to the government; that he had been in the Province and thought a large body of the inhabitants might be induced to join in a revolution. He wished the witness to assist in the undertaking. He observed that the witness was then going to reside at Saint Regis, on the river Saint Lawrence; that he, the prisoner, wished secretly to introduce into Lower Canada, in the spring of the year, a quantity of arms and ammunition, as well by the river Saint Lawrence as by Lake Champlain; and he thought the whole might be concealed in rafts of lumber: He added, that a great quantity might also be introduced into the Province in rafts of firewood, from the Chateauguay river, and that these would be the least suspected, as they would be thought to be rafts from Upper Canada: “ Your situation,” said the prisoner, “ at Saint Regis is much suited to these objects which I have in view.” The prisoner then informed him, that he had a brother who was coming to the lines with a large quantity of dry goods, to be sold for the purpose of procuring a quantity of provisions, to be ready when the cause might require them; and that his brother's store of goods would furnish him (the Prisoner) with a good excuse for going backwards and forwards. The Prisoner urged the Witness to engage in the business, which however he declined; upon which the Prisoner observed “ that he was sorry and that if he (the Witness) divulged the conversation which had then passed between them, he (the Prisoner) must inevitably be hanged.”

On his cross examination, he said he did not know whether the Prisoner was or was not an American subject. That he (the Witness) was a Canadian by birth, that he left the Province in 1776, and was a naturalised subject of the United States.

Thomas Butterfield—Said he was a subject of the United States of America—He first saw the prisoner at Swanton, in Vermont, in November last : He told the witness he had a secret to tell him if he would not reveal it ; that he had been in Canada to feel the pulse of the inhabitants, to learn whether they would rise in arms against the British government, and thought they only wanted somebody to head them. That he was employed in this business by Mr. *Adei*, the French minister, and was then returning to him, at Philadelphia, to tell him what he had learnt. That he had a number of friends in Canada, on whom he could depend. He said he thought that the garrison of Quebec might be surpris'd, and that if that could be done, the country might soon be conquered. That he propos'd to introduce numbers of men into Canada, from the United States, by means of rafts and on other pretences. He press'd the witness to join with him in the undertaking, *which he engaged to do*. The prisoner, at parting, told him he should return to Canada in the month of April following. That about the twentieth of April last, the prisoner came again to Swanton : He inquired of the witness whether he (the prisoner) was discovered; and, whether it would be safe for him to go into Canada ; that the prisoner expressed his fears on this head, and told the witness he would not go till he had seen one Charles Frichette, a Canadian, who lived near St. John's, in Canada ; that he sent the witness for Frichette, and that after seeing and conversing with him, he determin'd to proceed to Quebec ; that at parting he told the witness, that the object of his journey was to see whether and in what manner the garrison of Quebec might be taken by surpris'e. The witness, in the course of the examination, said *that he (the witness) had been in pay since he first engaged with the prisoner, in November last.*

On his cross examination, he said that he believed the prisoner to be a subject of the United States ; that he, the witness was arrested at St. John's in May last, upon suspicion of high treason, and was still in custody.

Charles Frichette—First saw the prisoner at St. John's, in July 1796. He wish'd to speak with him in private ; told him his name was David M'Lane ; that he had something to tell him of importance and *required an oath of secrecy*, which the witness took. He ask'd the witness to procure for him a certificate signed by six Canadians, of this import :—“ That “ they were dissatisfied with the British government, and wish'd to be under the French Republic.” The witness said he could not venture to ask such a certificate. The Prisoner wish'd him to go with him to Philadelphia, and from thence, if necessary, to France ; the witness refused. He saw the prisoner again in Vermont near the Province line, in April last. Butterfield came for and conducted the witness to him ; the prisoner had a long conversation with him, and up in the witness telling him that he thought he might safely go into Canada, the prisoner engag'd him to accompany him to Quebec. They set out, and pass'd the for. at St. John's in the night, and proceeded towards Quebec, not by the post road, but by the south shore road. The prisoner said he meant to conceal his name, and order'd the witness to call him *Jacob Felt*. At Saint Nicholas, near Quebec, the prisoner ask'd him if he thought the Canadians ripe for a revolution ;

tion ; and after further conversation, added, that he, the prisoner, was a general in the service of the French Republic ; that he was then on his way to Quebec, and had a design of taking that garrison by surprize, which he thought practicable. That five hundred men armed with pikes of wood hardened in the fire and headed with iron, by pursuing his idea, might effect it. That they crossed from Saint Nicholas to the north shore of the river Saint Lawrence, about two miles above Quebec ; that the prisoner concealed himself in the woods near Wolf's Cove, and sent the witnesses into the City to bring one Mr. Black to him—which he did. That Black and the prisoner had a long conversation together upon the means of exciting a revolution, and the taking of Quebec by surprize ; that Black persuaded the prisoner to come into Quebec after dark, and to remain at his house—The prisoner at first seemed averse to it, but finally consented, and promised to come with the witness in the dusk of the evening. Mr. Black then left them, and the witness conducted the prisoner into Quebec, and to Mr. Black's house the same night.

John Black, Esquire—Was at home when Frichette came to his house—and offered some oak timber for sale ; but after a little time desired to speak with him in private, when alone Frichette after some introductory conversation, asked him if he was the Mr. Black who had been imprisoned by Government in 1794, the witness said he was, can you be depended upon said Frichette significantly, the witness answered in the affirmative, upon which Frichette, told him that he was sent by a French General, then in the woods near Wolf's Cove, to say that he wished to see him—and that he would conduct the witness to him, the witness thought he ought to go to discover who this French General was, and what were his plans, and accordingly consented, he was conducted by Frichette, to the wood near Wolf's Cove, where he found the prisoner.—He apologized for the liberty he had taken in sending for him, and after observing that the witness had probably learnt something of his views from Frichette, told him—“*that he was sorry to see a great people groaning under the Tyranny of England,*” and added, “*my object is to put out the British Government from the Continent of America,*” The witness asked by what means, upon which the prisoner entered fully into a plan of exciting the Canadians to take arms against the Government, he proposed first to engage a few men of influence, and by their means to provide others, that these should be joined by many others, already engaged in the United States of America, who would enter the Province, previous to a certain day to be appointed, under various pretences, a part of the arms to be Pikes headed with iron, of eight feet in length—he thought he said, that the Garrison of Quebec, might be surprized, and that measures might be adopted for distributing liquors mixt with laudanum, to the troops, he said he wished not to take a life if possible to avoid it, “*but at the same time*” said he, “*for the sake of posterity, all who resist must fall,*” the prisoner then told him, that he left Mr. Adet on the seventh of April, and that he was going to France immediately, to procure the number of French troops necessary to co-operate in the intended Revolution—“*the Spanish Minister at Philadelphia is also concerned with us,*” said the prisoner “*but Adet is the man of business, the Spaniard is a Fop*”—the witness hitherto knew

knew the prisoner by the name of "Jacob Felt" but he produced him a letter from a Mr. Hunden, which recommended him to the witness by the name of Colonel David M. Lane, which he then found to be the prisoner's name—the prisoner in the course of the conversation said, "you may think me young for the enterprize, I have undertaken, but this is the system, which France pursues at present—she will not employ an old General"—the witness prevailed on the prisoner, to come to town after dark, and left him to be conducted by Fricette, to the house of him the witness, when night came on—the witness as soon as he arrived in town, gave information of what had passed, to a Magistrate, and the prisoner was apprehended at his house the same evening.

On being cross examined, he said that his letter from Hunden (which he produced) was merely a letter of business, respecting lumber.

HERMAN WITSIUS RYLAND, Esquire—deposed that he was present when the prisoner was apprehended at Mr. Black's house—the witness asked his name, he said *Felt*—the witness answered that his name was *de Lane*; the prisoner replied that the witness was mistaken—the witness enquired what money he had with him, and the prisoner produced a bag of one hundred and sixty dollars—the witness took the money, sat down to write the prisoner a receipt for it and asked him of whom he should say he had received the money! the prisoner answered "of *Jacob Felt*;"—the witness gave a receipt for so much money, found on *Jacob Felt* alias *David McLane*."

THE ATTORNEY GENERAL then informed the Court that he had several other witnesses, who were present but as the case was now perfectly established, he should here close the evidence on the part of the Crown.

The prisoner made his defence in person. He observed, that he was sensible that a black Cloud hung over him, but that it would shortly be dispelled into gentle showers—He had been indulged he said in every thing reasonable and was grateful to the Court, they had permitted both him and his Counsel to speak, he was confident he could explain what now appeared against him. (*The prisoner here turned towards the audience and seemed prepared to address them—The Chief Justice however interrupted him. He said the Court would be happy to hear every thing he could say in his defence, but that it must be addressed to the n—The prisoner begged pardon and proceeded.*)

He said he found it necessary to give a short narrative of his life—he had been a Merchant at Providence in Rhode Island and had unfortunately failed in trade; that the expectation of his failure first brought him to Canada. He learnt from a half brother, one *Jacob Felt*, who was concerned in trade with him, that Canada held out many commercial advantages: that this was in the fall of 1795. He advised his brother to take a certain quantity of Goods from the store, and to proceed with them to Canada to see what could be done. His brother did so—That he desired his brother to meet him at one *Greig's* near the Province line on the first of May, and went there in the expectation of finding him—His brother was gone but had left some goods there—he then for the first time came into Canada to Saint John's—before this he had been about Lake Champlain loitering away his

time till he was to meet his brother, and he was two or three days at this time with the witness *Butterfield*. He proceeded from St. John's to Montreal and put up at the house of the witness *Cushing*. He met there a Mr. Moore who had come in, expecting to be employed in cutting roads or canals and who begged him not to interfere in his speculation—that finding nothing could be done in this way, he returned to *Grigs* where he saw the witness, *Barnard*, and asked him a number of questions of a mercantile nature—that he asked *Barnard* respecting the loyalty of the Canadians, because if there had been a probability of disturbances, it would not have been prudent for him to think of settling in Canada, and he must have turned his thoughts to some thing else—that he returned afterwards again to Montreal and having heard much of the mountain, he went to visit it—that upon his return from thence to *Cushings* house, the witness, *Cushing* told him he had done wrong as he was much suspected—he answered, why suspected? that he could give good proof who he was,—that he then produced from his saddle bags the paper to which *Cushing* had deposed, from between the soles of an old shoe, where it had slipped by accident from his Pocket Book, which having fallen into the water when crossing Lake Champlain was much torn.

He would explain how he came by that paper, his wife was related to a family of the name of Belcher at New Port, in Rhode Island. There was a brother followed the Sea and died, leaving some property in France, which his sisters on account of the war could not get. He wished to go to France to get this money to bring out goods for it, which would yield him a Commission, he went to the French Minister at Philadelphia to get a Certificate, the Minister was not there but his Clerk whose name he could not remember, gave him a Paper certifying “That the Minister interested himself in his family concerns,”—He did not however go to France, but returned to Canada, here finding that there had been disturbances and that he was suspected, he determined to go back to New York and from thence to France, on his arrival at New York, he found that the French took all American Vessels even those bound to their own ports and he then resolved not to go, but to return again to Canada, as he was afraid of his Creditors. On the Lake Champlain he found he could procure timber on credit, which he determined to sell in Canada and to purchase horses which he thought would yield a double advantage, he met the witness *Butterfield* and was recommended by him to the witness *Frichette* as a good guide to conduct him into the Province, he accordingly sent for him and came with him to Quebec—He did not give in his name at St. John's because he did not know that it was necessary and did not wish to give his Creditors a clue to find him out and that he was so apprehensive of his Creditors, that when he came to Quebec he asked the witness *Black*, if there was any person in Quebec from the States, as they might know him. That when at Saint Nicholas, *Frichette* told him that some Canadians were in Gaol on account of their opposition to the Road Bill—and that he thereupon asked if *Frichette* did not think the Canadians would rise again, and endeavour to release their companions—That *Frichette* talked to him about arming the Canadians with pikes, if any thing should happen—That he brought

brought two letters from Mr. Hunsden, one for the Witness Black and the other for Mr. Blackwood the Merchant, and that both were upon business and stated that he had timber to dispose of—he had nothing to object against the Witnesses they might be honest men. But that all men were liable to be mistaken and that they had grossly mistaken his views which were not political but mercantile—His story was a very plain one and the Jury must see from the fair narrative he had given that he was an Innocent man—He concluded his defence by an address to the Deity praying him to put eloquence and persuasive arguments into the mouths of his Counsel who were then to speak in his behalf; and to impress his Innocence upon the minds of the Court and Jury.

MR. PYKE said, that the arduous and important task of conducting the prisoner's defence had been assigned by the Court to his learned friend Mr. Fraacklin and himself—important it was in every point of view, arduous he confessed when he considered his own want of experience, he wished the prisoners Counsel possessed of more abilities than he could presume to, yet he said he felt a degree of confidence when he reflected that he was before an English Tribunal ready at all times to extend its indulgence to those unfortunate persons brought before it accused of capital crimes and that the Court was in some measure considered as Counsel for the prisoner he therefore did not doubt but that he should receive both countenance and assistance in his endeavour to discharge his duty—He expressed his satisfaction to find such respectable characters on the Jury knowing them to be incapable of being governed by those prejudices which influence only weak and unenlightened minds and that those reports which had been circulated against the prisoner would have no weight with them in giving their Verdict—Persuaded he was that however appearances might be against the prisoner yet that they would require positive and indisputable evidence of the charges brought against him, that evidence which the Law, in those cases, requires, and not mere words, and vague conversations so liable to be misinterpreted for should the smallest doubt be entertained of the guilt of the prisoner it was the duty of the Jury to lean to the side of mercy and acquit him—He said he was under no apprehensions for the prisoner knowing that he was before a Tribunal where justice is mingled with mercy unlike those of a certain Republic where accusation and suspicion were sufficient grounds for conviction. The prisoner at the Bar stood charged 1st. with compassing and intending to depose the King and put him to death, and secondly with adhering to and comforting the King's Enemies—The nature of the crime of High Treason and its several species had been ably explained by his learned friend the Attorney General but he begged leave to differ from him in his application of it to the present case—He said as to the first charge there was not a shadow of proof of any intention in the prisoner to depose or take away the life of our beloved Sovereign indeed it was absurd to suppose that he had such an Intention, and it was equally absurd to suppose that the Act of any individual in this distant part of his Majesty's Dominions could in the smallest degree affect his sacred person, he said the Jury must be of opinion that the first charge was not supported—As to the second he said there was no proof that the prisoner had actually given aid and information

to the King's enemies, they had endeavoured to prove an intention to do so but that was not sufficient; to support this charge it was necessary to prove that he had actually given aid and information—Indeed no other proof had been given but of conversations which took place between the prisoner and the witnesses the whole of which as to any design against this Country or of aiding its enemies appeared to be altogether improbable, indeed it should appear from one part of Frichette, testimony that Frichette did not believe the prisoner had any such design—The prisoner he said was a native and subject of the United States where he had hitherto always resided but being unfortunate in trade he was much harrassed by his Creditors and forced to leave his home and family to seek an Asylum in this country, his Creditors even pursued him here and this was the cause of his taking upon him the name of *Felt*—Arrived in Canada it was natural for him previous to fixing himself in any business to inquire into the state of the country— And what were those inquiries? Was there not a time when every Citizen of Quebec made the same and all ranks here endeavoured to obtain information of the disposition of the Canadians in the distant parishes—Thank God those inquiries were now unnecessary—however he conceived they were not more criminal in Mr. M^r. Lane than in any other person—he acknowledged the conduct of the prisoner had been very imprudent but it certainly was not such as would justify them in convicting him of High Treason, he hoped therefore they would acquit the prisoner on this charge also—He trusted that any omissions of his Counsel would be supplied by the superior discernment of the Court and concluded with saying he did not doubt that they would do justice and by their verdict acquit the several duties which they owed to the Laws the prisoner and themselves.

Mr. Frauchlin followed *Mr. Pyke*, he said he believed it was not necessary for him, to make any apology for appearing in defence of the unfortunate Man at the Bar, as the Court had assigned him that duty. It was an important task, but he would endeavour to perform it. He conceived from the narrative the Prisoner had himself given to the Jury, that the transactions, in which he had been concerned, now appeared in a light very different from that in which the Counsel for the prosecution had endeavoured to place them. The Prisoner's views were entirely of a private nature, his object was to retrieve his broken fortunes in Canada by engaging in some profitable Trade, and the questions he asked respecting the state of the Country, and the political dispositions of the People, were merely prompted by his desire of ascertaining the probability of success in business and of being assured of the propriety of fixing his residence in the Province; which he had heard was disturbed by internal troubles. Such being his motive, there could be nothing criminal in acquiring the most accurate information on this head—he conceived that neither of the Counts charged in the indictment had been established, no evidence had been adduced to shew that the Prisoner had compassed the King's death. In support of this latter charge, it was necessary to prove some direct plan to take away the King's life, as in *Crohagan's* case, for the subversion of the Government of this Province was not likely to affect the natural life of the King, even the overthrow of his Authority by a Revolution which severed from the

British

British Empire, thirteen Colonies, did not endanger His Majesty's natural existence. It was usual in England to charge persons concerned in plots against the Government, with compassing the King's death, and the reason given by Foster, is, that experience hath shewn that between the Dethronement and the graves of Princes, the distance is very small—But the same reasoning could not apply in this case, and that therefore it was clear they must acquit the Prisoner on this Count—the second Count also stood unsupported, for there was no proof of aid being given to the enemy. He observed that as the Crime of High Treason was great, so was the punishment severe, and this consideration ought to induce the Jury to contrive every thing favorably for the Prisoner, and not to give a verdict to his prejudice but upon the clearest proofs, he could not help recommending to them, to consider his case with the strictest impartiality, more particularly as the Prisoner was a Foreigner. On that account candour and liberality ought to distinguish the Trial. That the Evidence ought to be viewed with a scrutinizing eye, as it came partly from accomplices, who ought always to be heard with caution, for being themselves implicated, it is their aim to shift the burden of guilt from their own shoulders, and to save themselves from punishment by ensuring the conviction of the Person under Trial, he remarked a seeming inconsistency in Barnard's evidence, who, tho' he told the Prisoner, at their second meeting at Laprairie, that he had informed a Magistrate of their first conversation, was yet entrusted with a deeper knowledge of his plan. Butterfield's manner of giving his testimony must have forcibly struck the Jury and inclined them to give but little credit to him; and to prevaricating a witness as Fricette deserved still less attention, he could not but remind the Jury with what scrupulous exactness, Juries in England examined the proofs on prosecutions for High Treason; for which he appealed to the late state trials, and indeed there could not be an excess of caution—He concluded by observing, that he entrusted the Prisoner's fate to the Jury with confidence,—Gentlemen of their integrity and discernment would doubtless consider his case without prejudice or bias, and he felt assured, that by acquitting the Prisoner, they would satisfy their consciences and discharge their duty to the country.

The Attorney General—In reply said, that notwithstanding, the lateness of the hour, he must yet request the attention of the Jury, for a short time—It was his duty, to attend to what had fallen from the Prisoner and his Counsel, he was bound not to neglect whatever tended to prove his Guilt.—No part of the evidence on the part of the Crown, stood controverted by the prisoner, on the contrary he had admitted the different meetings with Barnard, Cushing, Butterfield, Fricette and Black, and even the substance of the conversations which passed between them—and at the first blush of the defence, it was evident, that it was nothing, for not a single witness had been called to support it—the object of the defence was to induce the Jury to believe that his views in Canada, were mercantile, not traitorous; but in this he was not confident, one moment his visit to Canada, was to establish himself in trade, another, merely to avoid his Creditors—admitting the latter to be the object, why did he so often leave Canada, when so long as he remained within the Province, he was free from arrest. Admitting the former, what could

could have induced him (when he made the inquiries, which the different witnesses have stated,) to have taken them apart? would he inform them that he had a secret of the utmost importance to communicate? that he put his life into their hands? or would he exact an oath of secrecy? Is it a mercantile transaction, to tell Barnard, Cushing, Chandonet, Butterfield, Fricette and Black, that his object is to excite a revolution in Canada? while he makes his inquiries, he eyes not the mercantile, but the political situation of the country. Are the people well affected to the Government? will they rise in rebellion against their lawful Sovereign? these are his questions, while at the same moment, he avows himself, to be in the service of the French Republic—that he is on his way from Canada, to the Minister of that Republic at Philadelphia, to acquaint him, with what he then knew, with the result of his researches—even the visit to the mountain of Montreal, bears no affinity to trade; it is examined by him, not in a commercial, but a military point of view.—The proposal to distribute Laudanum among the King's troops—the intended use of pikes, not to be opposed to the musket and bayonet, but appropriated, (he feared) for the more dreadful purpose of assassination, the organization of the numbers he proposed to engage under ten men of influence—Were these mercantile transactions? or could they be supposed for a moment to have relation to peaceful commerce? the prisoner was aware that the paper he produced to Cushing would bear hard against him, and attempted by an improbable story to explain it. It was extraordinary that he did not even recollect the name of the clerk by whom he says it was signed, while the witness Cushing pointedly swore that it was signed "Adet." But he was not singular in this instance, for the whole of his defence was contradicted by the witnesses for the Crown, and stood totally unsupported by any evidence in its favor. The prisoner had attempted to account for frequent visits to Philadelphia—The reason was obvious, it was the residence of the France minister. He had also attempted to account for his various visits to Canada—this was not necessary—He was not accused for having visited Canada once or oftener. His intention to overthrow the government of the country, to which he came under the appearance of an innocent stranger, was the crime of which he was accused. The prisoner had, unfortunately for himself, wished to speak in his own defence, and had admitted points which his counsel would not have allowed. He had strengthened the evidence for the Crown by what he had advanced in justification of his conduct. What his counsel had said in his favor was but little, but he knew not, in such a case, how that little had been collected. It was however his duty to pay as much attention to their arguments as to those of the prisoner in person. They had endeavoured to prove that the prisoner was a foreigner; if any advantage could be derived from this fact, they must receive it from the Court, not from the jury; whether the prisoner stood exonerated, *by law*, from the guilt of treason, because he was an alien, was clearly a point of law; candour and liberality ought certainly to distinguish the trial, but not partiality; the jury could not acquit a foreigner on evidence that would convict a native. They had said there was no proof of his intention to kill the king personally—He begged to be understood

derstood by the jury, he had never advanced such an absurdity : he referred to what he had said when he had opened the evidence ; it was the political, and not the natural existence of the Sovereign, at which the prisoner had aimed. They had also said that there was no proof of his having aided or assisted the enemies of the King : he mentioned the cases of Francis Henry de la Motte, of Florence Hensley, William Gregg and Thomas Vaughan, as expressly in point ; no actual assistance in either of these cases had been given ; their intention to give assistance was held sufficient to make their treason compleat. They had said that some of the witnesses were persons accused as accomplices with the prisoner in his treason—It was true—but still they were good witnesses in law. It remained with the jury to affix that degree of belief to their testimony which they in their consciences thought proper.

He would remark however that the evidence of Butterfield and Frichette the only accomplices was by no means weak, they did not stand alone they were supported by the united Testimony of Barnard, Cushing, Chandonet and Black, as to Frichette particularly the Jury themselves had seen with what reluctance he deposed against the Prisoner—this was the strongest proof that he ought to be believed in all he had sworn, against him, the conduct of the Jurors in the cases of Thomas Hardy, and others lately decided in London had been held up as examples for the Jury in the present case. He should not venture his own sentiments on the conduct of those Juries but he should appeal to the opinion of the justly-celebrated Mr. Burke. He in a late publication had observed “ That public prosecutions were become little better than Schools for Treason : of no use but to improve the dexterity of Criminals in the Mystery of Evasion, or to shew with what compleat impunity men might conspire against the Commonwealth, with what safety assassins might attempt its awful head.”

— The Attorney General concluded by remarking to the Jury that the Evidence on the part of the Crown was compleat. The original treasonable design of the Prisoner against the King's Government was established by the concurrent testimony of Barnard, Cushing, Chandonet, Butterfield and Frichette, his return into the Province and journey to Quebec for the purpose of putting that design in execution, was proved by Butterfield, Frichette and Black—On a case so clear not controverted by any evidence on the part of the Prisoner the Jury, he was confident could not entertain a doubt.

THE CHIEF JUSTICE—summed up the evidence and stated to the jury the law upon the Prisoner's case, in manner at once clear, candid and accurate—as to the law, he observed that it was clearly settled—that the jury were walking in a path that had been often trod before—every attempt to subject the Province to the Dominion of any foreign power was clearly treason, as was also every attempt to give information to the enemy, to enable them either to annoy us or to defend themselves. This had been repeatedly determined, particularly by all the Judges of England in the case of William Gregg, and by my Lord Mansfield and the Justices of the King's Bench, in the case of Florence Hensley. In both cases the intelligence designed for the enemy never reached them ; it was intercepted, but

there was no doubt upon the evidence, it was held to be compleat proof, not only of an adherence to the enemy, but of compassing the King's death. In the course of various other observations upon the law relative to the case, he cited the cases of Lord Preston of Vaughan, and several others, and on the points of these cases applicable to the questions which were under immediate consideration, he commented at large. The counsel for the prisoner had, he said, endeavoured to prove that he was an alien, and it appeared to him they had succeeded: but he was bound to tell the jury that, by the law of the country, it was (unfortunately for him) immaterial whether he was an American or a British subject.—If the facts charged against him were proved, he was in either case guilty of High Treason. He remarked that the Statute of William III. which required two witnesses in cases of treason did not require two witnesses to each overt act; that if one witness which the jury believed proved one overt act; and another, another overt act of the same description of treason, they were two witnesses to prove the treason itself, and consequently sufficient. The learned Judge then summed up the evidence, observing he was sorry that there was very little to be drawn from it in favor of the prisoner. The evidence of Barnard and of Cushing went to establish the fifth, ninth, tenth and eleventh overt acts, and with less strength the third and fourth—that the evidence of Chandonet and Butterfield was pointed upon the sixth, seventh and eighth, and corroborated the testimony given by Barnard and Cushing, upon the third, fourth, ninth, tenth and eleventh.—He added, that the twelfth, thirteenth and fourteenth overt acts appeared to be proved by the testimony of Butterfield, Fricette, Black and Ryland; but that there did not appear to be any sufficient evidence offered in support of the first or second overt acts. He had thus, he said, discharged his duty, so far as it respected the law of the case, and the evidence which had been offered; but he must caution the jury on the weight which the opinion of the court was to have on the application of the evidence they had heard.—The declaration of the law applicable to the case, they were bound to receive from the court; but on facts they (the jury) were solely to decide. The verdict must be their's—and to whatever had fallen from the court respecting the facts, either for or against the prisoner, they were to pay as much attention as they would to the opinions of honest men, and no more.—The evidence they had heard must be believed by them in their consciences, or they could not find a verdict against the prisoner—and whether the witnesses were or were not to be believed, they and they only could determine.—If they believed the witnesses, and conceived that the treasons, or either of them, charged against the prisoner stood clearly and satisfactorily proved, they must find him guilty.—If they thought otherwise, it was their duty to acquit him. He should leave the whole with them to decide according to their oaths.

The Jury withdrew for a few minutes and returned with their verdict:
GUILTY.

The ATTORNEY GENERAL moved for Judgement, and the Prisoner was then asked if he had any thing to say why sentence of death should not be pronounced against him—he said he had and by his Counsel made a motion in arrest of Judgement upon two grounds—one the general law of Treason;

Treason, which they averred did not extend to the case of the Prisoner—the other that he was an Alien and was not av rred to be a British subject on the face of the Indictment.—This motion in arrest of Judgement, was however, after solemn argument over ruled on both points—and the Prisoner having nothing further to offer, the *Chief Justice* proceeded to pronounce sentence in the following words :

David M^r Lane,

You have been indicted for the crime of High Treason, to which indictment you pleaded not guilty, and for your trial put yourself on God and the country, by which country you have been found guilty. You have been tried by a respectable and intelligent Jury, many of whom have heretofore served on the grand inquest. Your trial has been attended with such circumstances of fairness, openness and lenity, as do not obtain in any country upon earth except where the laws of England prevail. More than twenty days have elapsed since you were acquainted with the particulars of the charge brought against you, and of the names of the witnesses to prove it, that you might not be surpris'd by a sudden accusation, and might have full time to prepare your defence. After the facts charged were fully established by the verdict, your counsel have been heard on every objection that could be brought to the regularity of the proceedings; whereas, had you been accused of the like crime in that country whose government you would wish to impose on this Province, instead of being allowed a period of twenty days, you might have been charged, convicted and executed in less than so many minutes: Reflect, therefore, whether you have not been guilty of a most unjust attempt against this government.

It appears in evidence that you are an alien to the King's government; notwithstanding which, you have been treated with the same indulgence as though you had been a native subject. True it is, that a treaty of amity subsists between his Majesty's subjects and the citizens of the United States, many of whom have borne public testimony to the kindly offices received from the King's subjects: It is an intercourse we wish to cherish, as well with public bodies as with individuals, and as it is not probable that you personally have received an injury from this colony—you have been guilty of an unprovoked attempt against this government.

Having heard of some disturbances that were excited on account of the road Bill, you falsely concluded that His Majesty's Canadian subjects were disaffected to government and ready to join in a rebellion, which you were willing to conduct. You might have known that it is easy to provoke murmurs on a like occasion in the best regulated states; in England similar discontents have taken place and subsided as in this country, for a short experience has convinced the people that the measure was greatly for their benefit; putting conscience out of the question, as a prudent man, you had no grounds to go upon. No one, therefore, but a rash and unprincipled character would have engaged in so desperate an enterprise: and no one but a cruel and inhuman character would have projected such measures to carry it into execution. Consider, then, whether you have not been guilty of a most atrocious and sanguinary attempt against this government.

Perhaps you might think that these terms savour of a spirit of reproach—

far

far from it; in your pitiable condition to betray such a temper were very unworthy. No—they are uttered in the spirit of admonition, and that upon this principle: You seem to possess a good understanding: I wish, therefore, to fasten on your mind, the persuasion of this manifest truth which nothing but the most perverse obstinacy can resist—namely: that though your designs were most hostile against this government, yet you have experienced that fair trial you would not have met with in any other government under Heaven—In hopes, that when the mist of delusion shall have disappeared, the conviction of one truth, may prepare your mind for the admission of others, and finally produce that sense of contrition, and remorse, which can alone expiate your dangerously wicked crimes. Had your traitorous project been carried into execution, who is there in this numerous audience that would not have felt the consequence among his friends and relations, or in his own person? But as it has pleased Providence to baffle your pernicious designs, I shall press this subject no further. This government, which you wish to overthrow, has like all others provided for its security against those who wish to destroy it. In the scrutiny of offences it is more lenient than others, but is equally severe in the punishment. That punishment you have justly incurred, and it would be highly uncharitable to beguile you with the expectation that it will not be inflicted. Let me, therefore, most seriously exhort you to employ the short time you have to live, in submitting yourself with humiliation and repentance to the Supreme Ruler of all things, whose goodness is equal to his power, and who, though you suffer here, may admit you to his everlasting mercy hereafter. That such mercy may be your portion, is my most earnest prayer.

It remains that I should discharge the painful duty of pronouncing the sentence of the law, which is: "That you, David M'Lane, be taken to the place from whence you came, and from thence you are to be drawn to the place of execution, where you must be hanged by the neck, but not till you are dead, for you must be cut down alive and your bowels taken out and burnt before your face; then your head must be severed from your body, which must be divided into four parts, and your head and quarters be at the King's disposal; and the Lord have mercy on your soul."

The ATTORNEY GENERAL moved, that a day should be fixed for the execution—and the Court appointed Friday the 21st day of July instant.

This important Trial commenced at seven o'clock in the morning, was concluded at nine in the evening, and was attended by the most numerous audience ever assembled in Quebec.

On Friday the 21st July the prisoner (David M'Lane) pursuant to his sentence, was taken from the common Gaol and placed upon a hurdle, which moved in slow solemnity towards the place of execution, attended by the Sheriff and Peace Officers of the District, a military guard of fifty men and a great multitude of spectators. About a quarter after ten the hurdle drew up close to the Gallows
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erected upon the Glacis without the Garrison wall—As soon as it slopt M. Lane rose up, he was dressed in white linen Grave Cloaths, and wore a white Cap on his head. The Reverend Mr. Mountain and the Reverend Mr. Spark attended him and with them he continued in fervent prayer for some minutes. He then informed the executioner that he was ready, and was by him directed to ascend the ladder which he immediately did—But the executioner observing that he was too high, he descended a step or two and then addressed the spectators in the following words, “ This place gives me pleasure, I am now going where I have long wished to be and you who now see me must all follow me in a short time, some of you perhaps in a few days—let this be a warning to you to prepare for your own deaths.” Then addressing himself to the military who were drawn up in a hollow square about the Gallows, he added, “ You with arms in your hands, you are not secure here even with your arms, I am going where I shall be secure without them.”

He immediately drew the cap over his face exclaiming “ Oh God receive my Soul, I long to be with my Jesus” and dropped his handkerchief as a signal for the executioner, who instantly turned him off—He appeared to struggle with death, but a short time.

The body hung for five and twenty minutes and was then cut down—A Platform with a raised block upon it was brought near the Gallows, and a fire was kindled for executing the remainder of the sentence. The head was cut off, and the executioner holding it up to public view, proclaimed it “ the head of a Traitor”—an incision was made below the breast and a part of the bowels taken out and burnt; the four quarters were marked with a knife but were not divided from the body.

The whole of the execution took up about two hours and the conduct of the unfortunate sufferer was in every respect composed and becoming his situation.

F I N I S.

